

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEXY AVILA,

Plaintiff,

-against-

STACY TENZIE, NYC CORRECTIONAL,
OFFICER SHIELD NO. 1478

Defendant.
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ORDER

19 Civ. 11920 (VEC)(GWG)

GABRIEL W. GORENSTEIN, United States Magistrate Judge


It has come to the Court's attention that the "DIN" number on the docket sheet incorrectly states "02" instead of "20." This typographical error apparently arose because plaintiff never supplied an updated address to the Court and the Clerk's Office made a docket entry on October 9, 2020 that contained an incorrect DIN number. Accordingly the Clerk is directed to amend the DIN to read "20-G-0288." See Docket ## 42, 43.

The record reflects that the error has not prevented plaintiff from receiving mail (even if it was delayed) and that she has been well aware of her obligation to respond. See Docket ## 42, 43. No mail has been returned as undeliverable. Thus defendant's recent request, dated May 12, 2021 (copy attached), seeking to deem the motion fully submitted is granted. The Court will rule on the motion in due course.

The Clerk is requested to change the DIN number for plaintiff as stated above and to then mail a copy of this Order and attachment to plaintiff.

SO ORDERED.

Dated: May 12, 2021
New York, NY



GABRIEL W. GORENSTEIN
United States Magistrate Judge



JAMES E. JOHNSON
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 Church Street
NEW YORK, NY 10007

JAMES R. MURRAY
Phone: (646) 951-3033
Email: jamurray@law.nyc.gov
Assistant Corporation Counsel

May 12, 2021

VIA ECF

Honorable Gabriel W. Gorenstein
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Lexy Avila v. Correction Officer Stacy Tenzie
19-CV-11920 (VEC) (GWG)

Your Honor:

I am an Assistant Corporation Counsel in the Office of James E. Johnson, Corporation Counsel of the City of New York, and counsel for Defendant Correction Officer (“CO”) Stacy Tenzie. Defendant writes to respectfully request that the Court consider her August 21, 2020 motion to dismiss fully briefed or, in the alternative, dismiss the Amended Complaint for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). This is Defendant’s third request for the Court to consider her motion fully briefed and Defendant’s second request for the Court to dismiss the Amended Complaint pursuant to Rule 41(b).

By way of background, Plaintiff *pro se* initiated the instant action on December 30, 2019 and filed an Amended Complaint on July 16, 2020. ECF Nos. 2 and 28. On August 21, 2020, Defendant filed her motion to dismiss the Amended Complaint, making Plaintiff’s deadline to file a responsive motion September 21, 2020. ECF No. 30. On September 22, 2020, Plaintiff filed a letter on the Docket stating that she could not perform the research necessary to respond to Defendant’s motion to dismiss because she could not access the law library in her facility due to COVID-19-related restrictions. ECF No. 34. By Order dated September 23, 2020, the Court directed Plaintiff to file her response by October 23, 2020 and ordered Defendant to submit her reply by November 6, 2020. ECF No. 35.

On October 30, 2020, Defendant requested that the Court consider her motion to dismiss fully briefed because Plaintiff had not yet filed a response. ECF No. 36. Later that day, the Court issued an Order denying Defendant's request on the ground that Plaintiff had moved to a different facility without updating her address, and therefore did not receive the Court's September 23, 2020 Order. ECF No. 38. In that same Order, the Court also directed Plaintiff to file by November 30, 2020 either a response to Defendant's motion or a letter informing the Court whether she intended to proceed with this case and warned Plaintiff that failure to comply could, by itself, result in dismissal. Id.

On December 7, 2020, Defendant requested for the second time that the Court consider her motion fully briefed or, in the alternative, dismiss the Amended Complaint for failure to prosecute under Rule 41(b) on the grounds that Plaintiff still had not filed a response or a letter indicating whether she intended to continue litigating this case. ECF No. 39. By Order dated December 11, 2020, the Court directed Plaintiff to file, by January 3, 2021, "either (1) [] a letter or memorandum responding to the motion to dismiss or (2) [] a letter informing this Court whether she intends to proceed with this case." ECF No. 41. On January 5, 2021, two letters from Plaintiff were entered on the Docket, in which Plaintiff requested an extension of time to respond because she had received the Court's December 11, 2020 Order 13 days after it had been postmarked and had been placed in isolation after being diagnosed with Covid-19. ECF Nos. 42 and 43. By Order dated January 7, 2021, the Court directed Plaintiff to file her response within 21 days after being released from isolation or by May 3, 2021—whichever was earlier—and warned Plaintiff that it "will not accept any filing after May 3, 2021." ECF No. 45.

As of date of this filing—more than 7 months after Plaintiff's initial deadline to respond—Plaintiff has still not submitted an opposition to Defendant's August 21, 2020 motion to dismiss. Accordingly, Defendant renews her request for the Court to consider her motion fully briefed. Additionally, because Plaintiff failed to comply with the deadlines set forth in the Court's September 23, 2020, October 30, 2020, December 11, 2020, and January 7, 2021 Orders, Defendant also renews her request for the Court to dismiss the Amended Complaint for failure to prosecute under Rule 41(b).

Thank you for your consideration in this matter.

Respectfully submitted,

James R. Murray s/
James R. Murray
Assistant Corporation Counsel
New York City Law Department
100 Church Street, Room 3-183
New York, New York 10007
(212) 356-2372
jamurray@law.nyc.gov

BY FIRST CLASS MAIL

To: Lexy Avila
DIN No. 02-G-0288
Bedford Hills Correctional Facility
247 Harris Road
Bedford Hills, NY 10507